

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PAMELA B. O/B/O MICHAEL P., an Individual,

Plaintiff,

v.

ANDREW M. SAUL, Commissioner of Social Security,

Defendant.

Case No.: 2:18-03647 ADS

MEMORANDUM OPINION AND ORDER

I. INTRODUCTION

Plaintiff Pamela B., on behalf of Michael P. ("Plaintiff"),¹ challenges Defendant Andrew M. Saul², Commissioner of Social Security's (hereinafter "Commissioner" or

¹ Plaintiff's and his representative's names have been partially redacted in compliance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

² On June 17, 2019, Saul became the Commissioner of Social Security. Thus, he is automatically substituted as the defendant under Federal Rule of Civil Procedure 25(d).

1 “Defendant”) denial of his applications for a period of disability and disability insurance
2 benefits (“DIB”), and supplemental security income (“SSI”). Plaintiff contends that the
3 Administrative Law Judge (“ALJ”) improperly assessed his mental residual functional
4 capacity (“RFC”), as well as erred in finding that Plaintiff had the ability to perform jobs
5 existing in significant numbers in the national economy. For the reasons stated below,
6 the decision of the Commissioner is affirmed, and this matter is dismissed with
7 prejudice.

8 **II. FACTS RELEVANT TO THE APPEAL**

9 Plaintiff testified that he has a high school education and worked as an electrician
10 for twenty-five (25) years, until he was laid off in 2010. (Administrative Record “AR” 51,
11 69-70). Plaintiff worked for a company and at the beginning of his career did a lot of
12 residential work, but he mainly did commercial electrical work at the end. (AR 69-70).
13 After Plaintiff lost his job, he testified that he did try to find work in the electrical field or
14 warehouse work but was never able to secure a new job. (AR 71). Plaintiff testified that
15 shortly after losing his job, however, was when his neuropathy kicked in and his alleged
16 disability onset date is stated as October 7, 2010. (AR 51, 70).

17 When asked as to his primary problem, Plaintiff stated that it “is my feet and
18 back . . . and my neck.” (AR 71). Plaintiff likened the pain in his feet to “walking on a
19 bed of needles.” Id. Plaintiff further testified that his diabetes and hypertension were
20 not under control. (AR 71-72). These were the only problems that Plaintiff identified as
21 preventing him from working when questioned by the ALJ. Under questioning by his
22 attorney, Plaintiff also testified that he had received psychiatric care for depression and
23 was taking medication for depression as well. (AR 74).

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1 **III. PROCEEDINGS BELOW**

2 **A. Procedural History**

3 Plaintiff protectively filed his applications for DIB and SSI on July 7, 2014,
 4 alleging disability beginning October 7, 2010. (AR 189-95, 196-204). Plaintiff was
 5 insured for DIB through June 30, 2013. (AR 206-07). Plaintiff's claims were denied on
 6 October 8, 2014 (AR 125-29, 130-34), and on November 10, 2014, Plaintiff filed a
 7 request for hearing before an ALJ (AR 138-39). A hearing was held before ALJ Sally C.
 8 Reason on June 15, 2016. (AR 49-78). Plaintiff, represented by counsel, appeared and
 9 testified at the hearing, as well as medical expert Kweli J. Amusa, MD, and vocational
 10 consultant Antonio R. Reyes. Id.

11 On September 16, 2016, the ALJ issued a partially favorable decision, finding that
 12 Plaintiff had been disabled within the meaning of the Social Security Act³ since February
 13 3, 2015, but not prior thereto.⁴ (AR 24-48). On October 11, 2016, Plaintiff filed a
 14 request for review of the ALJ's decision with the Appeals Council. (AR 184-88).
 15 Plaintiff passed away on June 26, 2017, and his sister, Pamela B., substituted in as a
 16 party to his claim. (AR 7, 10). The ALJ's decision became the Commissioner's final
 17 decision when the Appeals Council denied Plaintiff's request for review on March 23,
 18 2018. (AR 1-6). Plaintiff then filed this action in District Court on April 30, 2018,
 19 challenging the ALJ's decision. [Docket ("Dkt.") No. 1].

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21 ³ Persons are "disabled" for purposes of receiving Social Security benefits if they are
 22 unable to engage in any substantial gainful activity owing to a physical or mental
 23 impairment expected to result in death, or which has lasted or is expected to last for a
 24 continuous period of at least 12 months. 42 U.S.C. §423(d)(1)(A).

21 ⁴ As Plaintiff was insured for DIB only through June 30, 2013, the ALJ's finding
 22 effectively denied Plaintiff's DIB claim. Plaintiff was only awarded benefits on his SSI
 23 claim, from February 3, 2015.

1 On September 11, 2018, Defendant filed an Answer, as well as a copy of the
 2 Certified Administrative Record. [Dkt. Nos. 14, 15]. The parties filed a Joint
 3 Submission on February 6, 2019. [Dkt. No. 20]. The case is ready for decision.⁵

4 **B. Summary of ALJ Decision After Hearing**

5 In the decision (AR 28-43), the ALJ followed the required five-step sequential
 6 evaluation process to assess whether Plaintiff was disabled under the Social Security
 7 Act.⁶ 20 C.F.R. §§ 404.1520(a) and 416.920(a). At **step one**, the ALJ found that
 8 Plaintiff had not been engaged in substantial gainful activity since October 7, 2010, the
 9 alleged onset date. (AR 30). At **step two**, the ALJ found that Plaintiff had the
 10 following severe impairments: (a) status post left ulna nerve surgery; (b) diabetes
 11 mellitus; (c) hypertension; (d) obesity; and (e) depression. (AR 30). At **step three**, the
 12 ALJ found that since the alleged onset date of October 7, 2010, Plaintiff “has not had an
 13 impairment or combination of impairments that meets or medically equals the severity
 14 of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR
 15 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925 and 416.926).” (AR 31).

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 17 ⁵ The parties filed consents to proceed before the undersigned United States Magistrate
 18 Judge, pursuant to 28 U.S.C. § 636(c), including for entry of final Judgment. [Dkt. Nos.
 19 8, 10].

20 ⁶ The ALJ follows a five-step sequential evaluation process to assess whether a claimant
 21 is disabled: Step one: Is the claimant engaging in substantial gainful activity? If so, the
 22 claimant is found not disabled. If not, proceed to step two. Step two: Does the claimant
 23 have a “severe” impairment? If so, proceed to step three. If not, then a finding of not
 24 disabled is appropriate. Step three: Does the claimant’s impairment or combination of
 25 impairments meet or equal an impairment listed in 20 C.F.R., Pt. 404, Subpt. P, App. 1?
 26 If so, the claimant is automatically determined disabled. If not, proceed to step four.
 27 Step four: Is the claimant capable of performing his past work? If so, the claimant is not
 28 disabled. If not, proceed to step five. Step five: Does the claimant have the residual
 29 functional capacity to perform any other work? If so, the claimant is not disabled. If
 30 not, the claimant is disabled. Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995)
 31 (citing 20 C.F.R. §404.1520).

1 The ALJ then found that Plaintiff had the Residual Functional Capacity (“RFC”)⁷
2 to perform a range of light work as defined in 20 CFR 404.1567(b) and 416.967(b)⁸,
3 except:

4 [Plaintiff] can stand and walk for 6 hours in an 8-hour day, one hour at
5 a time, but never climb ladders, ropes, and scaffolds, occasionally
6 balance, stoop, crouch, kneel, and crawl. [Plaintiff] can occasionally be
7 exposed to extreme temperatures, vibratory equipment, and uneven
terrain. [Plaintiff] can occasionally use the left upper extremity (non-
dominant) for gross and fine motor functions.
(AR 32-33).

8 At **step four**, based on Plaintiff’s RFC and the vocational expert’s testimony, the
9 ALJ found that Plaintiff could not perform his past relevant work as an electrician. (AR
10 41). At **step five**, the ALJ found that “[p]rior to February 3, 2015, the date [Plaintiff’s]
11 age category changed,” considering Plaintiff’s age, education, work experience, RFC and
12 the vocational expert’s testimony, there “were jobs that exist in significant numbers in
13 the national economy that [Plaintiff] could have performed” such as clerk, furniture
14 rental clerk and gate attendant. (AR 41-42).

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⁷ An RFC is what a claimant can still do despite existing exertional and nonexertional
18 limitations. See 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1).

19 ⁸ “Light work” is defined as
20 lifting no more than 20 pounds at a time with frequent lifting or carrying
21 of objects weighing up to 10 pounds. Even though the weight lifted may be
22 very little, a job is in this category when it requires a good deal of walking
23 or standing, or when it involves sitting most of the time with some pushing
24 and pulling of arm or leg controls. To be considered capable of performing
substantially all of these activities.

20 C.F.R. § 404.1567(b); see also Rendon G. v. Berryhill, 2019 WL 2006688, at *3 n.6
(C.D. Cal. May 7, 2019).

1 The ALJ also found that “[b]eginning on February 3, 2015, the date [Plaintiff’s]
2 age category changed,” considering Plaintiff’s age, education, work experience, RFC and
3 the vocational expert’s testimony, “there are no jobs that exist in significant numbers in
4 the national economy that [Plaintiff] could perform.” (AR 42). Accordingly, the ALJ
5 determined that Plaintiff was not disabled prior to February 3, 2015 but became
6 disabled on that date and has continued to be disabled through the date of the decision,
7 September 16, 2016. (AR 42). However, the ALJ determined that the Plaintiff was not
8 under a disability within the meaning of the Social Security Act at any time through
9 June 30, 2013, the date last insured. (AR 42).

10 **IV. ANALYSIS**

11 **A. Issues on Appeal**

12 Plaintiff raises two issues for review: whether the ALJ (1) erred in the
13 determination of Plaintiff’s mental RFC; and (2) erred in finding that Plaintiff had the
14 ability to perform jobs existing in significant numbers in the national economy. [Dkt.
15 No. 20, p. 3].

16 **B. Standard of Review**

17 A United States District Court may review the Commissioner’s decision to deny
18 benefits pursuant to 42 U.S.C. § 405(g). The District Court is not a trier of the facts but
19 is confined to ascertaining by the record before it if the Commissioner’s decision is
20 based upon substantial evidence. Garrison v. Colvin, 759 F.3d 995, 1010 (9th Cir. 2014)
21 (District Court’s review is limited to only grounds relied upon by ALJ) (citing Connett v.
22 Barnhart, 340 F.3d 871, 874 (9th Cir. 2003)). A court must affirm an ALJ’s findings of
23 fact if they are supported by substantial evidence and if the proper legal standards were
24 applied. Mayes v. Massanari, 276 F.3d 453, 458-59 (9th Cir. 2001). An ALJ can satisfy

1 the substantial evidence requirement “by setting out a detailed and thorough summary
 2 of the facts and conflicting clinical evidence, stating his interpretation thereof, and
 3 making findings.” Reddick v. Chater, 157 F.3d 715, 725 (9th Cir. 1998) (citation
 4 omitted).

5 “[T]he Commissioner’s decision cannot be affirmed simply by isolating a specific
 6 quantum of supporting evidence. Rather, a court must consider the record as a whole,
 7 weighing both evidence that supports and evidence that detracts from the Secretary’s
 8 conclusion.” Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (citations and
 9 internal quotation marks omitted). “Where evidence is susceptible to more than one
 10 rational interpretation,’ the ALJ’s decision should be upheld.” Ryan v. Comm’r of Soc.
 11 Sec., 528 F.3d 1194, 1198 (9th Cir. 2008) (citing Burch v. Barnhart, 400 F.3d 676, 679
 12 (9th Cir. 2005)); see Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006) (“If
 13 the evidence can support either affirming or reversing the ALJ’s conclusion, we may not
 14 substitute our judgment for that of the ALJ.”). However, the Court may review only “the
 15 reasons provided by the ALJ in the disability determination and may not affirm the ALJ
 16 on a ground upon which [s]he did not rely.” Orn v. Astrue, 495 F.3d 625, 630 (9th Cir.
 17 2007) (citation omitted).

18 Lastly, even if an ALJ errs, the decision will be affirmed where such error is
 19 harmless, that is, if it is “inconsequential to the ultimate nondisability determination,”
 20 or if “the agency’s path may reasonably be discerned, even if the agency explains its
 21 decision with less than ideal clarity.” Brown-Hunter v. Colvin, 806 F.3d 487, 492 (9th
 22 Cir. 2015) (citation omitted); Molina v. Astrue, 674 F.3d 1104, 1115 (9th Cir. 2012).
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1 **C. The ALJ Properly Assessed Plaintiff's RFC**

2 Plaintiff contends that his assessed RFC is not supported by substantial evidence
 3 because the ALJ should have included additional mental limitations in the RFC finding.
 4 Specifically, Plaintiff contends ALJ's decision was contrary to the opinions of the
 5 examining and reviewing physicians.

6 1. Legal Standard for Consideration of Impairments in the Disability
Evaluation and for Weighing Medical Opinions

8 At step three of the sequential evaluation, the ALJ determines whether the
 9 claimant's impairment or combination of impairments is of a severity to meet or
 10 medically equal a listed impairment. Before turning to step four, the ALJ fashions the
 11 claimant's RFC. A district court must uphold an ALJ's RFC assessment when the ALJ
 12 has applied the proper legal standard and substantial evidence in the record as a whole
 13 supports the decision. Bayliss v. Barnhart, 427 F.3d 1211, 1217 (9th Cir. 2005). In
 14 making an RFC determination, the ALJ may consider those limitations for which there
 15 is support in the record and need not consider properly rejected evidence or subjective
 16 complaints. Id. The Court must consider the ALJ's decision in the context of "the entire
 17 record," and if the "evidence is susceptible to more than one rational interpretation,' the
 18 ALJ's decision should be upheld." Ryan, 528 F.3d at 1198 (citation omitted).

19 An ALJ is not obligated to discuss "every piece of evidence" when interpreting the
 20 evidence and developing the record. See Howard ex rel. Wolff v. Barnhart, 341 F.3d
 21 1006, 1012 (9th Cir. 2003) (citation omitted). Similarly, an ALJ is also not obligated to
 22 discuss every word of an opinion or include limitations not actually assessed by the
 23 medical professional. See Fox v. Berryhill, 2017 WL 3197215, *5 (C.D. Cal. July 27,
 24 2017); Howard, 341 F.3d at 1012.

1 The ALJ must also consider all medical opinion evidence. 20 C.F.R. §§
2 404.1527(b), 416.927(b). “As a general rule, more weight should be given to the opinion
3 of a treating source than to the opinion of doctors who do not treat the claimant.”
4 Lester, 81 F.3d at 830 (citing Winans v. Bowen, 853 F.2d 643, 647 (9th Cir. 1987)).
5 Where the treating doctor’s opinion is not contradicted by another doctor, it may only
6 be rejected for “clear and convincing” reasons. Id. (citing Bayliss v. Barnhart, 427 F.3d
7 1211, 1216 (9th Cir. 2005)). “If a treating or examining doctor’s opinion is contradicted
8 by another doctor’s opinion, an ALJ may only reject it by providing specific and
9 legitimate reasons that are supported by substantial evidence.” Trevizo v. Berryhill, 871
10 F.3d 664, 675 (9th Cir. 2017) (quoting Bayliss, 427 F.3d at 1216).

11 “Substantial evidence” means more than a mere scintilla, but less than a
12 preponderance; it is such relevant evidence as a reasonable person might accept as
13 adequate to support a conclusion.” Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir.
14 2007) (citing Robbins, 466 F.3d at 882). “The ALJ can meet this burden by setting out a
15 detailed and thorough summary of the facts and conflicting clinical evidence, stating his
16 interpretation thereof, and making findings.” Magallanes v. Bowen, 881 F.2d 747, 751
17 (9th Cir. 1989) (citation omitted); see also Tommasetti v. Astrue, 533 F.3d 1035, 1041
18 (9th Cir. 2008) (finding ALJ had properly disregarded a treating physician’s opinion by
19 setting forth specific and legitimate reasons for rejecting the physician’s opinion that
20 were supported by the entire record).

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1 2. The ALJ Properly Considered Plaintiff's Mental Impairments.

2 In assessing Plaintiff's mental impairment, the ALJ stated:

3 The record does not support that depression rendered the claimant
4 disabled. The claimant has never been hospitalized in a psychiatric
5 hospital for an extended period for his mental health impairment of
6 depression. His suicidal ideation appears secondary to acute life events,
7 such as the break-up with his girlfriend.

8 (AR 37).

9 The ALJ then provided a significant review and analysis of Plaintiff's mental
10 health records to support her finding. (AR 37-40). The ALJ considered the opinion of
11 the State agency medical consultant, Elizabeth Covey, Ph.D. (AR 85-103) and the
12 consultative examiner who performed a comprehensive psychological evaluation of
13 Plaintiff in September 2014, Avazeh Chehrazi, Ph.D. (AR 919-24). Plaintiff contends
14 that the ALJ rejected the opinions of both Dr. Chehrazi and Dr. Covey, failing to provide
15 any "clear and convincing" reasons and/or 'specific and legitimate' reasons, and
16 concluded that Plaintiff had no mental limitations other than to simple repetitive tasks
17 (unskilled work)." [Dkt. 20, 6].

18 Preliminarily, the Court notes the ALJ found that Plaintiff was limited to light
19 work and, as Plaintiff states points out, did limit him to simple repetitive tasks as well.
20 (AR 31-33, 40). Accordingly, she necessarily credited aspects of Plaintiff's subjective
21 complaints and the findings of the examining, and reviewing physicians. To the extent
22 the ALJ rejected portions of Dr. Covey and Dr. Chehrazi's opinions, she complied with
23 Magallanes and provided specific and legitimate reasons for doing so that are supported
24 by the entire record.

25 As mentioned above, in addition to limiting Plaintiff in the RFC to light work, the
26 ALJ found Plaintiff was limited to "simple repetitive tasks." (AR 40). The ALJ

1 specifically stated that that she considered “all symptoms” in fashioning the RFC. (AR
2 33). In doing so, the ALJ considered Plaintiff’s subjective statements and testimony
3 about his mental health treatment, the mental health records of evidence, and the fact
4 that no treating or examining medical source assessed him as precluded from sustaining
5 work activity due to any mental health issues. (AR 37-40).

6 Plaintiff has failed to show how this exhaustive consideration of his mental health
7 issues was in error. As mentioned, the ALJ found depression to be a severe impairment
8 at step two, assessed Plaintiff’s mental functioning at step three and acknowledged that
9 the “paragraph B” and “paragraph C” criteria are separate findings from the RFC, and
10 then considered all of Plaintiff’s mental health issues in assessing her RFC. (AR 31-33,
11 37-40). Accordingly, Plaintiff has not shown the ALJ failed to consider his mental
12 impairments in assessing the RFC.

13 To the extent Plaintiff also contends that the ALJ should have included even
14 more restrictive limitations in the RFC, Plaintiff has failed demonstrate he is entitled to
15 relief. Plaintiff has not pointed to any opinion precluding him from all work activity on
16 account of mental health issues. See, e.g., Matthews v. Shalala, 10 F.3d 678, 680 (9th
17 Cir. 1993) (substantial evidence supported finding claimant, although impaired, was not
18 disabled and could perform work because “[n]one of the doctors who examined
19 [claimant] expressed the opinion that he was totally disabled”). Further, he has not
20 explained how the single “moderate” findings in the paragraph B and paragraph C
21 analysis or any of his other mental limitations are sufficiently restrictive to ultimately
22 preclude him from performing work. See, e.g., Hoopai, 499 F.3d at 1077 (explaining the
23 Ninth Circuit has not “held mild or moderate depression to be a sufficiently severe non-
24 exertional limitation that significantly limits a claimant’s ability to do work beyond the

1 exertional limitation."); Shapiro v. Berryhill, 2020 WL 836830, at *1, 6 (D. Nev. Feb.
 2 20, 2020) (RFC that included restriction to simple, non-detailed, non-complex work,
 3 with occasional interaction with co-workers and supervisors but never the public,
 4 adequately accounted for the moderate findings in two paragraph B criteria); Ball v.
 5 Colvin, 2015 WL 2345652, at *3 (C.D. Cal. May 15, 2015) ("As the ALJ found that
 6 Plaintiff's mental impairments were minimal, the ALJ was not required to include them
 7 in Plaintiff's RFC."); Sisco v. Colvin, 2014 WL 2859187, at *7-8 (N.D. Cal. June 20,
 8 2014) (ALJ not required to include in RFC assessment mental impairment that imposed
 9 "no significant functional limitations").

10 Plaintiff's main argument is that the ALJ improperly rejected Dr. Covey's
 11 restriction that he can perform simple repetitive tasks "with no public contact." Plaintiff
 12 contends the ALJ failed to give specific and legitimate reasons for not including this
 13 limitation on public contact in the assessed RFC. To the contrary, however, the ALJ did
 14 a thorough analysis of Plaintiff's record and testimony and found it does not support
 15 this limitation.

16 Accordingly, for the reasons outlined above, the Court finds no error in
 17 fashioning the RFC and concludes that the ALJ duly considered Plaintiff's mental
 18 impairments in the decision.

19 **D. The ALJ Properly Evaluated Plaintiff's Ability to Perform Jobs in**
the National Economy

21 Plaintiff asserts that the ALJ improperly relied on the vocational expert's
 22 testimony in finding Plaintiff was able to perform certain jobs, as the hypothetical given
 23 to the vocational expert did not include Plaintiff's mental limitations supported by the
 24 medical record. [Dkt. No. 20, 15].

1 Plaintiff's entire argument rests on the premise that the ALJ improperly
2 evaluated the opinions of Drs. Chehrazi and Covey and did not include sufficient mental
3 limitations in Plaintiff's RFC. As set forth, there was no legal error in the ALJ's
4 evaluation of these medical opinions. Furthermore, there also was no legal error in the
5 RFC assessed by the ALJ. Plaintiff would like for the ALJ to have included mental
6 limitations based almost exclusive on his subjective complaints. The ALJ is only bound
7 to include limitations to the RFC supported by substantial evidence. See Batson v.
8 Barnhart, 359 F.3d 1190, 1197 (9th Cir. 2004); Bayliss v. Barnhart, 427 F.3d 1211, 1217
9 (9th Cir. 2005); Osenbrock v. Apfel, 240 F.3d 1157, 1164-65 (9th Cir. 2001) ("Nor was
10 the ALJ bound to accept as true the restrictions set forth in the second hypothetical
11 question if they were not supported by substantial evidence.").

12 Based on the properly assessed RFC of light work, the ALJ properly relied upon
13 the VE testimony to conclude that prior to February 3, 2015, Plaintiff was "capable of
14 making a successful adjustment to other work that exists in significant numbers in the
15 national economy." (AR 41-42); see Bayliss, 427 F.3d at 1217 (because the "hypothetical
16 that the ALJ posed to the VE contained all of the limitations that the ALJ found credible
17 and supported by substantial evidence in the record," the "ALJ's reliance on testimony
18 the VE gave in response to the hypothetical therefore was proper").

19 There was no error in the ALJ's finding that Plaintiff had the ability to perform
20 jobs existing in significant numbers in the national economy prior to February 3, 2015.
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V. CONCLUSION

For the reasons stated above, the decision of the Social Security Commissioner is AFFIRMED, and the action is DISMISSED with prejudice. Judgment shall be entered accordingly.

DATE: June 8, 2020

/s/ Autumn D. Spaeth
THE HONORABLE AUTUMN D. SPAETH
United States Magistrate Judge